

Revised September 8, 2003

# **DRAFT**

## **Arkansas State Parks**

### **USE PERMIT POLICY**

The purpose of this policy is to establish criteria, procedures, fees and special considerations for the granting of Use Permit Agreements for residential access (individuals and developers), utility companies, and highway departments. A Use Permit Agreement shall give the holder legal permission to use Arkansas State Parks (ASP) land under a defined set of terms and conditions.

#### **I. CRITERIA**

- A. The Real Estate Officer shall determine if the requester has made every reasonable effort to secure access through properties other than those belonging to ASP and that those efforts have been denied, proven unfeasible, or deemed inaccessible.
- B. The Real Estate Officer shall determine that the granting of the requested Use Permit Agreement will not: (1) have a permanent detrimental impact upon a park or a museum's natural, archeological or historical resources, (2) will not substantially affect ASP's or the public's ability to fully utilize property adjacent to the requested permit area, and (3) does not conflict with a park's or museum's Master Plan or Long Range Development Plan.

#### **II. PROCEDURES**

- A. The requestor shall submit a request for the Use Permit Agreement in writing to:

Real Estate Officer, Planning & Development Section  
Arkansas State Parks  
#1 Capitol Mall, Little Rock, AR 72201.

The request should include the following information:

1. The reasons for the request to include: who, what, where, how, and why.
  2. A preliminary map reflecting the location of the proposed request and all other pertinent lands/boundaries.
  3. Information showing any other access options available and other attempts to secure access to the requestors' property, including the results of such effort.
- B. The Real Estate Officer shall provide research, secure recommendations from staff, etc., consisting of:
1. Review the request with the Park Superintendent/Museum Director, inspect the requested permit area, solicit their recommendations, and contact the Regional Supervisor for comments.
  2. If necessary to provide clarification of ownerships, boundaries etc., the Real Estate Officer shall research county courthouse records (or ASP Survey Crew).
- C. The Real Estate Officer shall analyze the information gathered to determine the validity of the request and obtain any other information necessary to make a recommendation to the Manager of Operations, Manager of Planning & Development, the Arkansas State Parks Director and the Arkansas State Parks, Recreation, and Travel Commission (Commission).
- D. The Real Estate Officer shall prepare a memorandum to the Manager of Planning & Development & the Director of Arkansas State Parks offering a recommendation based upon information gathered to include an analysis of what impact, if granted, a Use Permit would have on the park/museum (see I. B.)
1. The Memorandum shall state:
    - a. Facts of the request as presented by the requestor.
    - b. Any further research or information that was necessary to verify, clarify, or amplify the information supplied by the requestor.
    - c. The recommendation of the Park Superintendent, Regional Supervisor, Real Estate Officer, and the Chief Planner.
    - d. Survey/Plat maps/Photos, etc.
    - e. A Draft Use Permit to include any special conditions or restrictions (if applicable).

E. The Real Estate Officer shall:

1. Notify the requestor and the Park Superintendent that a Memorandum is being sent (include the date, time, and place of the meeting) to the Commission for their consideration.
2. In addition, the Real Estate Officer shall determine that the terms and conditions as recommended to the Commission and as shown in the draft Use Permit Agreement are acceptable to the requestor. If all or part of the terms and conditions are unacceptable to the requestor then determine if the request/draft Use Permit Agreement should be dropped or modified.

F. The Arkansas State Parks, Recreation , and Travel Commission shall consider the Use Permit Agreement request and shall approve or disapprove such a request.

1. If the request is disapproved: The Real Estate Officer shall advise the requestor in writing of the Commission's action with reason(s) (copy all staff listed at II B. 1. and II D).
2. If the request is approved:
  - a. The Real Estate Officer shall notify requestor of approval. The requestor will contact a registered land surveyor, arranging and paying for a survey and providing Arkansas State Parks with a legal description.
  - b. The Real Estate Officer shall send the Use Permit Agreement, to include the legal description, to the requestor for signature(s) and request fee payment.
  - c. Upon return of the signed Use Permit Agreement from the Requestor, the Real Estate Officer shall obtain the Arkansas State Parks Director's signature on the Use Permit Agreement.
  - d. The Real Estate Officer shall obtain a copy of the Commission Minute Order approving the request from the Executive Director's Executive Assistant and shall file said document with the original fully executed Use Permit Agreement.
  - e. The Real Estate Officer shall file the Use Permit Agreement at the local County Courthouse. All filing expenses shall be borne by the requestor.
  - f. The Real Estate Officer shall send copies of the fully executed Use Permit Agreement to the requestor, the Park Superintendent, and shall file the original in the land records file.
  - g. Additionally, the Real Estate Officer shall file a hard copy in the open files and e-file to records.

- h. The Park Superintendent shall inspect and assure that the terms and conditions in the consummated Use Permit Agreement are being followed and if not shall notify the permittee in writing for corrective action and report any violations to the Real Estate Officer.

### **III. FEES**

- A. The residential and commercial development permittee shall pay associated expenses involved with processing the request for a Use Permit Agreement, which may include actual expenses and hours of time involving State Park personnel. The fee charged to the permittee will be determined on a case by case basis and approved by the Arkansas State Parks, Recreation, and Travel Commission. In addition, the permittee will be responsible to contract with a surveyor and pay for all necessary services. The survey will be performed by a registered land surveyor. Permittee will provide Arkansas State Parks with a copy of the legal description and survey.
- B. Utility companies and government agencies permittees that develop or replace bridge improvements, new highways, widening of roads and/or installation of utilities that are being placed for the good of the community shall not be charged a fee.

### **IV. PERMIT CONDITIONS**

The Real Estate Officer shall determine if there is a need to insert any special conditions or restrictions in the standard Use Permit Agreement. The following are some, but not necessarily all, of the conditions/restrictions that could be used with the standard Use Permit Agreement:

- 1. Residential Access Use Permits and any rights thereunder are not assignable without prior written consent of Arkansas State Parks and do not run with the land. Use Permit Agreements for utility companies and highway departments shall be in perpetuity, excluding abandonment of the described use.
- 2. The Permit Area for residential access shall be 20 feet total width or 10 ft. each side of a surveyed center line. Other use permit request R-O-Ws widths will be approved on a case by case basis. Requestor agrees to promptly pay Arkansas State Parks for all damages caused to the lands by construction or maintenance outside the Permit Area. Any removal of vegetation shall be coordinated with the Park Superintendent.

3. Residential access requestors shall be responsible for providing and maintaining a locked entry gate at a location designated by the Park Superintendent or his designated representative.
4. Residential access requestors shall provide the Park Superintendent or his designated representative with keyed access to the gate for operational purposes, fire protection, law enforcement, or other management duties.
5. The requestor for private residential access shall place and maintain a sign at the gate stating Private Drive. This shall be the only access granted by State Parks.
6. All development and maintenance of use permit areas shall be at the expense and responsibility of the requestor.
7. This Permit shall not in any way authorize any development or activity which is in conflict with any City, County, State or Federal law.
8. No structures or improvements of any kind shall be constructed or placed upon the Permit Area, nor the terrain altered in any manner, nor shall any timber or other vegetation be removed without prior written consent of Arkansas State Parks.
9. The requestor shall be responsible for controlling all erosion resulting from the use or development of the permit area.
10. All improvements within the Permit Area shall become, upon termination of the use permit, the property of the State Of Arkansas, Department of Parks and Tourism. Parks, at its option, upon termination, may require requestor to remove any or all improvements within the permit area.
11. Any merchantable timber 6" in diameter (DBH - diameter, breast height) and greater that is removed by the requestor in order to improve the Permit Area shall result in the requestor compensating Arkansas State Parks for such timber at the market rate value in the local area.
12. The requestor hereby assumes responsibility for all damages and injuries to persons and property which may result by reason of construction operation, maintenance, repair and replacement of the permitted use and agrees and covenants to hold the Arkansas Department of Parks and Tourism harmless from any such claim or claims.
13. This agreement may be terminated by requestor or Arkansas State Parks with 60 days written notice for default of any of the above terms or conditions or if the property be vacated for a period of 120 days.
14. This Permit shall not be amended, modified, or altered in any way except in writing.
15. Nothing in this Permit shall interfere with the fulfillment, obligations and rights of Arkansas State Parks to manage the lands and programs.

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS**  
**WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

**DEPARTMENT/AGENCY** Arkansas Department of Parks and Tourism

**DIVISION** Arkansas State Parks

**DIVISION DIRECTOR** Greg Butts

**CONTACT PERSON** Sandy Burch

**ADDRESS** One Capitol Mall, Little Rock, AR 72201

**PHONE NO.** 682-6918 **FAX NO.** 682-1864 **E-MAIL** sandy.burch@mail.state.ar.us

**INSTRUCTIONS**

- A.** Please make copies of this form for future use.
- B.** Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C.** If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D.** Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

**Donna K. Davis**  
**Subcommittee on Administrative Rules and Regulations**  
**Arkansas Legislative Council**  
**Bureau of Legislative Research**  
**Room 315, State Capitol**  
**Little Rock, AR 72201**

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- 1. What is the short title of this rule?  
**Access Use Permit Agreements**
- 2. What is the subject of the proposed rule?  
**Regulating Access Use Permit Agreements**
- 3. Is this rule required to comply with federal statute or regulations? Yes \_\_\_\_\_ No **XXX**  
If yes, please provide the federal regulation and/or statute citation.
- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?  
Yes \_\_\_\_\_ No **XXX**  
  
If yes, what is the effective date of the emergency rule? \_\_\_\_\_  
  
When does the emergency rule expire? \_\_\_\_\_  
  
Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes \_\_\_\_\_ No \_\_\_\_\_

5. Is this a new rule? Yes **XXX** No \_\_\_\_ If yes, please provide a brief summary explaining the regulation. **The regulation establishes criteria, procedures, fees and special consideration for the granting of Use Permit Agreements on park land for residential access, utility companies, and highway departments.**
- Does this repeal an existing rule? Yes \_\_\_\_ No **XXX** If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.
- Is this an amendment to an existing rule? Yes \_\_\_\_ No **XXX** If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**
6. Cite the state law that grants the authority for this proposed rule? If codified, please give Arkansas Code citation.  
**Arkansas Code #22-4-305, #22-4-310, Act 170 of 1937, etc.**
7. What is the purpose of this proposed rule? Why is it necessary?  
**To establish criteria, procedures, fees and special consideration for the granting of Use Permit Agreements on park land for residential access, utility companies, and highway departments.**
8. Will a public hearing be held on this proposed rule? Yes **XXX** No \_\_\_\_  
If yes, please complete the following:  
Date: **October 16, 2003**  
Time: **2:30 p.m.**  
Place: **Old Washington Historic State Park, 1914 Washington Public School, 700 NE Conway St., Washington, Arkansas 71862**
9. When does the public comment period expire for permanent promulgation? (Must provide a date.)  
**After comments are presented on October 16, 2003**
10. What is the proposed effective date of this proposed rule? (Must provide a date.)  
**December 1, 2003**
11. Do you expect this rule to be controversial? Yes \_\_\_\_ No **XXX** If yes, please explain.
12. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.  
**No groups or individuals have been contacted. All visitors of Arkansas State Parks and State Park Museums are affected by the proposal; therefore, a legal notice will be published in the Arkansas Democrat-Gazette from September 14 through September 16, 2003.**

## FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

**DEPARTMENT** Arkansas Department of Parks & Tourism

**DIVISION** Arkansas State Parks

**PERSON COMPLETING THIS STATEMENT** Greg Butts, Director

**TELEPHONE NO.** 682-7743 **FAX NO.** 682-1364 **EMAIL:** greg.butts@mail.state.ar.us

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

### **SHORT TITLE OF THIS RULE** Access Use Permit Agreements

1. Does this proposed, amended, or repealed rule or regulation have a financial impact?  
Yes **XXX** No \_\_\_\_\_
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.

**Not applicable**

3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. Please indicate if the cost provided is the cost of the program.

**Not applicable**

#### Current Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

#### Next Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \_\_\_\_\_

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation? Identify the party subject to the proposed regulation, and explain how they are affected.

#### Current Fiscal Year

**\$2,000 - \$2,400 (\*)**

**(\*) Estimated cost of \$500-\$600 for a residential access easement through an Arkansas State Park.**

#### Next Fiscal Year

**\$2,000 - \$2,400 (\*)**

What is the total estimated cost by fiscal year to the agency to implement this regulation?

#### Current Fiscal Year

\$ ( 0 )

#### Next Fiscal Year

\$ ( 0 )